



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 24-02470
)
Applicant for Security Clearance)

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
The Edmunds Law Firm (Answer)
Pro se (Hearing)

12/04/2025

Decision

ROSS, Wilford H., Administrative Judge:

Applicant mitigated the security concerns under Guidelines H (Drug Involvement and Substance Misuse) and B (Foreign Influence). Eligibility for access to classified information is granted.

Statement of the Case

On February 12, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and B. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer), along with Answer Exhibits A through K, on March 10, 2025, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 6, 2025. The case was assigned to me on May 13, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 15, 2025. I convened the hearing as scheduled on July 10, 2025. The Government submitted Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through C. He asked that the record remain open for additional documentation. He timely submitted Applicant Exhibit D (Applicant's wife's naturalization certificate) and Applicant Exhibit E (Applicant's DD-214). All of his exhibits were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 21, 2025. This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Procedural Rulings

At the hearing, the Government requested I take administrative notice of certain facts relating to the People's Republic of China (China). Department Counsel provided a thirteen-page summary of the facts, supported by 22 Government documents pertaining to China, identified as HE I. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact. (Tr. 15-16.)

Findings of Fact

Applicant is 46 years old and married with one child. He is employed by a defense contractor as a flight simulation technician. He served in the United States Air Force and received an Honorable Discharge. He seeks to retain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 13A, 15, 17, and 18; Applicant Exhibit E; Tr. 50-51.)

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. He admitted the single allegation under this paragraph with explanations.

1.a. Applicant admitted that he purchased and used THC edibles over a brief period of time in January 2022. He was suffering from severe insomnia and, at the urging of a friend, decided to try the edibles in an attempt to resolve the issue. He tried them twice over one weekend, did not like the experience, and threw the rest out. At that time, he was employed by a defense contractor and had a security clearance. The use of marijuana was legal in his state, but he admitted knowing that its use was against his employer's policy and Federal law. He has resolved his insomnia using other, legal, methods. He credibly stated that he has no future intentions of using marijuana in any form. He realizes the negative impact continued marijuana use can have on his life and career. He provided a written statement of intent not to use marijuana or any other illegal drugs in the future. He has had a negative drug test since issuance of the SOR. (Applicant Answer Exhibits A and B; Tr. 22-23, 25-28, 57.)

Paragraph 2 (Guideline B, Foreign Influence)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has foreign contacts and interests that may be a national security concern and may result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure of coercion by any foreign interest.

Applicant admitted allegations 2.a through 2.d under this guideline with explanations. He denied allegation 2.e with explanations.

2.a. Applicant's wife was born in China in 1986. She met Applicant through an internet dating agency in 2010. After a month-long visit to China, they became engaged. Applicant and his future wife went through the procedures of obtaining a fiancé visa and she came to the United States in late 2011. She and Applicant were married in January 2012. They have one child, who was born in April 2013 and is disabled. Applicant's wife returned to China shortly after the child was born because she was suffering from depression due to her child's medical condition. After three months she returned to the United States. She has not returned to China since. Their marriage is stable. (Tr. 28-41, 53-56.)

Applicant's wife became a naturalized American citizen in March 2022. Her Chinese passport has expired, and she does not have an America passport. Applicant's

American passport has expired, and he does not intend to obtain another one. (Applicant Answer Exhibit I; Applicant Exhibit D; Tr. 52-56.)

Applicant's wife held an office job in China about the time they met. He stated that she never worked for the Chinese Communist Party. (Tr. 33.)

Applicant's wife submitted a statement wherein she describes her own life and her relationship with her husband. She understands the limits of what she is allowed to know about her husband's job. (Applicant Exhibit C; Tr. 41-42.)

Concerning their son she says in Applicant Exhibit C:

Our son Bobby was born four months premature and was diagnosed with hydrocephalus. He has undergone multiple neurosurgeries, and his early years involved extensive hospital care. As his primary caregiver, I manage his therapy sessions, doctor appointments, and developmental meetings. Recognizing my role, the state . . . has approved me as a family provider for children with disabilities.

Applicant Exhibit B contains letters of recommendation concerning both Applicant and his wife. Several are from neighbors and friends, who state their overwhelming support for the two of them and how the wife has successfully integrated herself into American society.

Of particular note are three letters from therapists who work with their son, Bobby. These professionals have established a personal and professional relationship with Applicant and his wife. These people, who have intimate contact with both Applicant and his wife, support the fact that they are a strong family unit.

Applicant and his wife own their own home. They have a net worth of approximately \$400,000. (Applicant Exhibit H; Tr. 49.)

2.b. Applicant's wife's parents continue to live in China. They are both retired. Applicant has had minimal contact with them because he does not speak Chinese, and they don't speak English. His wife has minimal contact with her parents, usually involving their grandson. (Government Exhibit 3 at 5, 7; Tr. 32, 41.)

2.c. Applicant has minimal continuing contact with his wife's cousin's husband. This person is the only one of his wife's family who is relatively fluent in English, working for a German automobile manufacturer as an engineer. This person visited the United States with his family in 2016. Applicant corresponds with him currently once or twice a year. (Government Exhibit 3 at 5, 7; Tr. 44.)

2.d. Applicant's wife has two aunts, two cousins, and a friend who live and are citizens of China. His wife has infrequent contact with the aunts, but she corresponds with the others on a weekly to quarterly basis. (Government Exhibit 3 at 5, 7; Tr. 42.)

2.e. Applicant denied this allegation, which stated that his wife provided financial support to her cousin in the amount of approximately \$4,000 between 2021 and 2023. He stated that the money was sent over a longer period, and was more in the nature of presents as opposed to financial support. In addition, Western Union records show that money was sent from China to the United States, which was intended to purchase presents for their child. (Applicant Answer Exhibit G; Tr. 42-44.)

China

I take administrative notice of the facts set forth in the Administrative Notice documents concerning China, which are incorporated herein by reference.

China is a large and economically powerful country, with a population of over a billion people and an economy growing at about 10% per year. China has an authoritarian government, dominated by the Chinese Communist Party. It has a poor record with respect to human rights, suppresses political dissent, and engages in arbitrary arrests and detentions, forced confessions, torture, and mistreatment of prisoners.

China is one of the most aggressive countries in seeking sensitive and protected U.S. technology and economic intelligence. It targets the United States with active intelligence gathering programs, both legal and illegal. As a result, it is a growing threat to U.S. national security. In China, authorities routinely monitor telephone conversations, facsimile transmissions, e-mail, text messaging, and internet communications. Authorities open and censor mail. Its security services have entered personal residences and offices to gain access to computers, telephones, and fax machines. All major hotels have a sizable internal security presence, and hotel guestrooms are sometimes bugged and searched for sensitive or proprietary materials. There are several recent cases involving actual or attempted espionage, as well as the illegal export of information to China.

Policies

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. §802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant possessed and used THC edibles to relieve insomnia over one weekend in 2022. He was employed in a sensitive position and had a security clearance at that time. All of the stated disqualifying conditions have application to this case.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) "Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position," dated December 21, 2021. (Guidance.) In her Guidance, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana and issued the Guidance to "provide clarifying guidance." She reaffirmed SecEA's 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy, writing that "prior recreational marijuana use by an individual may be relevant to adjudications but [is] not determinative." She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

Applicant's THC edible use is three years in his past and has not been repeated. He explained at length that he thoroughly understands the consequences of any future drug use or exposure and has taken several steps to avoid it. He credibly testified and submitted a written declaration of his intent not to misuse drugs in the future. He also acknowledged that such misuse would be grounds for revocation of national security eligibility. Viewing his THC edible use in the context of the whole person, Applicant has mitigated the security significance of his past minimal drug involvement. Security concerns under Guideline H are mitigated. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline B, Foreign Influence)

AG ¶ 6 explains the security concerns pertaining to foreign influence as follows:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they

create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 sets out three conditions that could raise a security concern and may be disqualifying in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information; and
- (e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

China is known to target U.S. citizens to obtain protected information and has a significant interest in acquiring defense-related intelligence and technology. Applicant has connections to China because his wife was born there and still has family there. The Government has met its burden of production by raising the above disqualifying conditions and shifts the burden to Applicant to prove mitigation.

AG ¶ 8 lists three conditions that could mitigate foreign influence security concerns. Those with potential application in mitigating the security concerns in this case are:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is

so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant is a native-born American citizen. His wife, though born in China, is now a naturalized American citizen. Their 12-year-old son was born here. While Applicant's wife still has minimal contact with her family in China, it is obvious that the center of attention for her is their disabled son. Applicant and his wife have financial and personal connections to the United States that far outweigh her former connections to China. All three of the mitigating conditions have application to this case. Paragraph 2 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has fully mitigated the security concerns of his prior drug use and his connections to China. As stated elsewhere in this decision, and supported by the evidence, Applicant has earned the privilege of being granted national security eligibility. Paragraphs 1 and 2 are found for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge